	Case 3:08-cv-00833-JM-AJB Document	7 Filed 06/24/2008 Page 1 of 2	
1 2 3 4 5 6 7	James D. DeRoche, Bar No. 69592 JDeRoche@perkinscoie.com Steven C. Gonzalez, Bar No. 191756 SGonzalez@perkinscoie.com PERKINS COIE LLP 1620 26th Street, Sixth Floor – South Tower Santa Monica, CA 90404 PHONE: 310.788.9900 FAX: 310.788.3399 Attorneys for Defendant, Rocky Mountain Chocolate Factory, Inc.		
8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
10			
11	SDMS, INC., THOMAS P. ANDERSON, and KEN PECUS,	Case No. 08CV833 (JM) (AJB)	
12	Plaintiffs,	NOTICE OF MOTION AND MOTION TO DISMISS	
13	V.		
14	ROCKY MOUNTAIN CHOCOLATE	Time: 1:30 p.m.	
15	FACTORY, INC.,	Ctrm: 16 Judge: Hon. Jeffrey T. Miller	
16	Defendant.		
17		·	
18	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:		
19	PLEASE TAKE NOTICE that on August 1, 2008, at 1:30 p.m. or as soon thereafter as the		
20	matter may be heard by the Honorable Jeffrey T. Miller in Courtroom 16 of the United States		
21	District Court located at 940 Front Street, San Diego, CA 92101-8900, Defendant Rocky		
22	Mountain Chocolate Factory, Inc. ("RMCF") will, and hereby does, move the Court for an Order		
23	dismissing with prejudice the First Amended Complaint filed by SDMS, Inc., Thomas Anderson		
24	and Ken Pecus (together, "Plaintiffs") in this case.		
25	This Motion to Dismiss (the "Motion") will be, and hereby is, made pursuant to Fed. R.		
26	Civ. P. 12(b)(6), to dismiss Plaintiffs' First Amended Complaint and both of its Counts for failure		
27	to state a claim upon which relief can be granted. The grounds on which RMCF bases its Motion		
28	to Dismiss are set forth in the accompanying Memorandum Of Points And Authorities In Support		
	57023-0418/LEGAL14346573.2	NOTICE AND MOTION TO DISMISS Case No. 08CV833 (JM) (AJB)	

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1	Of Defendant's Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(6), filed		
2	herewith.		
3	WHEREFORE, Defendant, RMCF, respectfully requests that the Court dismiss Plaintiffs'		
4	First Amended Complaint in its entirety with prejudice.		
5	DATED: June 24, 2008 PER	KINS COIE LLP	
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7 8	sgon	s/Steven C. Gonzalez en C. Gonzalez, Bar No. zalez@perkinscoie.com	
9	Atto	rneys for Defendant xy Mountain Chocolate Factory, Inc.	
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28	3	NOTICE AND MOTION TO DIGITIES	
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